

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD MARTINEZ,

Plaintiff,

v.

CHALMERS, et al.,

Defendants.

1:02-CV-06311-AWI-LJO-P

ORDER DIRECTING SERVICE
BY THE UNITED STATES MARSHAL
WITHOUT PREPAYMENT OF COSTS

Plaintiff is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915. The court previously ordered plaintiff to provide information for service of process on form USM-285, sufficient copies of the complaint for service, and a notice of compliance. Plaintiff has filed the required papers. Accordingly, IT IS HEREBY ORDERED that:

1. The Clerk of the Court is directed to forward the following documents to the United States Marshal:

- (1) One completed and issued summons for each defendant to be served;
- (2) One completed USM-285 form for each defendant to be served;
- (3) One copy of the amended complaint filed on October 30, 2003 for each defendant to be served, plus an extra copy for the Marshal; and

(4) One copy of this order for each defendant to be served, plus an extra copy for the Marshal.

(5) One copy of the court's consent form for each defendant to be served.

2. Within ten days from the date of this order, the United States Marshal is directed to notify the following defendants of the commencement of this action and to request a waiver of service in accordance with the provisions of Fed. R. Civ. P. 4(d) and 28 U.S.C. § 566(c):

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3. The U.S. Marshal is directed to retain the summons and a copy of the complaint in their file for future use.

4. The United States Marshal shall file returned waivers of service as well as any requests for waivers of service that are returned as undelivered as soon as they are received.

5. If a waiver of service is not returned by a defendant within sixty days of the date of mailing the request for waiver, the United States Marshal shall:

a. Personally serve process and a copy of this order upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c) and shall command all necessary assistance from the California Department of Corrections (CDC) to execute this order. The United States Marshal shall maintain the confidentiality of all information provided by the CDC pursuant to this order.

b. Within ten days after personal service is effected, the United States Marshal shall file the return of service for the defendant, along with evidence of any attempts to secure a waiver of service of process and of the costs subsequently incurred in effecting service on said defendant. Said costs shall be enumerated on the USM-285 form and shall include the costs incurred by the Marshal's office for photocopying additional copies of the summons and complaint and for preparing new USM-285 forms, if required. Costs of service will be taxed against the personally served defendant in accordance with the provisions of Fed. R. Civ. P. 4(d)(2).

6. In the event that defendants make an appearance in this action by filing an answer, dispositive

1 motion, or other pleading, the U.S. Marshals Service need not personally serve those defendants.

2 7. In the events that defendants either waive service or are personally served, defendants are
3 required to reply to the complaint. 42 U.S.C. § 1997e(g)(2).

4 IT IS SO ORDERED.

5 **Dated: September 29, 2006**
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/s/ Lawrence J. O'Neill
UNITED STATES MAGISTRATE JUDGE